



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

April 16, 2003

Ms. Priscilla A. Lozano  
The University of Texas System  
Office of General Counsel  
201 West Seventh Street  
Austin, Texas 78701-2902

OR2003-2587

Dear Ms. Lozano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179488.

The University of Texas Health Science Center (the "university") received a request for all information regarding a named university employee, including the employee's personnel file. You advise that you are releasing most of the requested information. You claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted representative sample of information.<sup>1</sup>

You assert that the submitted information pertains to a sexual harassment investigation and that some of it is excepted from disclosure under section 552.101 in conjunction with common-law privacy. Section 552.101 protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to

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<sup>1</sup> We assume that the "sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683.

The court in the case of *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App. - El Paso 1992, writ denied) applied the above-referenced common-law right of privacy test to records resulting from a workplace sexual harassment investigation. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. *Ellen*, 840 S.W.2d at 525. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest was sufficiently served by the disclosure of such documents. *Id.* The *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.* When there is an adequate summary of the investigation, the summary must be released, but the identities of the victims and witnesses must be redacted and their detailed statements must be withheld from disclosure. *Id.*

You state that you will release the submitted summary report of the investigation to the requestor, and that the submitted witness interview notes are excepted under section 552.101. Upon review of the submitted information, we find that the report constitutes an adequate summary of the investigation into the relevant sexual harassment complaint. We conclude that the release of this report serves the legitimate public interest in the harassment allegations. Based on *Ellen*, however, we agree that the university must withhold the identities of the victim and witnesses to the alleged sexual harassment within the report under section 552.101 and common-law privacy. We have marked the information identifying the victim and witnesses that you must withhold. *See Ellen*, 840 S.W.2d at 525. Because the redacted summary report adequately serves the public interest in the information at issue, we further conclude that the submitted witness interview notes must be withheld from disclosure in their entirety under section 552.101 in conjunction with the common-law right to privacy.

Finally, we note that the summary report contains a small amount of information that may be confidential under section 552.117. Section 552.117(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential in accordance with section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See Open Records Decision No. 530 at 5 (1989)*. Thus, if the employee whose information is at issue elected under section 552.024, prior to the

university's receipt of the request, to keep the personal information we have marked confidential, you must withhold it under section 552.117(1) of the Government Code. You may not withhold this information under section 552.117 if the former employee did not make a timely election under section 552.024.

In summary, we have marked the information within the summary report that must be withheld under section 552.101 and common-law privacy. The information that we have marked pursuant to section 552.117 must be withheld if the employee whose information is at issue made a timely election under section 552.024. The remaining submitted information must be withheld under section 552.101 in conjunction with common-law privacy.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristen Bates", written in a cursive style.

Kristen Bates  
Assistant Attorney General  
Open Records Division

KAB/lmt

Ref: ID# 179488

Enc. Submitted documents

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